Supreme Court, U. S.
F I L E D
MAY 17 1976
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

NO. 75-1669

HARRY R. ILLMAN

Petitioner

vs.

OHIO STATE BAR ASSOCIATION

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petitioner, Harry R. Illman, prays for a Writ of Certiorari to review an order of The Supreme Court of Ohio entered on February 25, 1976 which permanently disbarred him from the right to practice law.

OPINION BELOW

The Opinion of The Supreme Court of Ohio by a 6 to 1 decision approving the findings of a hearing panel is found in Appendix A, pp. 10-13. A motion for rehearing was overruled on March 19, 1976 see Appendix B, pp. 15.

JURISDICTION

(1) Jurisdiction of this court is invoked under and by virtue of 28 U.S.C. 1257 (3) wherein petitioner claims he has been deprived of rights and privileges set up or claimed under the Constitution of the United States wherein petitioner claims denial of a timely request for counsel in a disciplinary proceeding or contempt action was a denial of due process.

(2) Rule 19 of this court which provides for a writ of certiorari "where a state court has a federal question of substance

not theretofore determined by this court, or had decided it in a way probably not in accord with applicable decisions of this court."

(3) Cases in support of jurisdiction are: In re *Ruffalo, Jr.* 390 U.S. 544; *Spevak v. Klein* 385 U.S. 511; *Powell v. Texas* 392 U.S. 514; *Argersinger v. Hamlin* 407 U.S. 25, *Ex parte Robinson,* 19 Wall, 505, In re *Oliver* 333 U.S. 257.

QUESTIONS PRESENTED

1. Does the denial of a timely request for counsel by an indigent in a disciplinary or contempt proceeding constitute denial of "due process of law" within the purview of the Fourteenth Amendment?
2. Is the mere preparation of an unexecuted will and a deed by a suspended attorney, acting under direction of a lawyer, conduct malum in se to warrant an order of disbarment therefor; or does such order violate "due process of law" provisions of the U. S. Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

Section I of the Fourteenth Amendment to the Constitution of the United States reads as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner's appeal can be decided without resort to a full transcript. The salient facts are apparent from the opinion of the lower court and can be readily stipulated. The simple facts are Petitioner was suspended for a period of five years

in 1952 then indefinitely suspended in December, 1969. Certiorari therefrom was denied October, 1969 No. 596, reinstatement attempt was rejected in 1972. Ceriorari therefrom was denied in Cause 72-1241 on the docket hereof. In December, 1974, he drafted a survivorship deed and a pair of wills for former clients, husband and wife. The deed was in the name of a practicing attorney who testified, as did Petitioner, of authority to do so. The documents were never executed. Before any action was taken, Petitioner wrote to the Secretary of The Ohio Board of Commissioners requesting advice of returning the fee on the abortive transaction but was advised not to contact the parties.

Thereafter, the Respondent filed a complaint in contempt under Governing Rule V rather than seek a contempt citation for violation of the Court order in suspension. Rule V became effective February 28, 1972 (see Appendix C, pp. 16).

Respondent filed his defenses and made a timely request in writing for appointment of counsel to represent him at the scheduled hearing. He did not receive notice of rejection or overruling of such request until the day of hearing. These facts are corroborated in the dissenting opinion of the Court below (App. A, pp. 12, 13 and R.I.).

The record indicates five (5) attorneys entered appearances before the Panel of the Court. Petitioner appeared alone. Before any evidence was taken, Petitioner stated in the record that he wanted counsel, that being forced to proceed without counsel was a denial of due process. This was a raising of the Constitutional question at the earliest available opportunity. The dissent corroborates such declaration in the opinion below. (App. A), (R.I.) incorporated herein by reference.

Thereafter Petitioner proceeded to attempt to defend himself as his own counsel. A finding was made by the Panel that a violation had occurred and recommended that the Ohio Supreme Court disbar Petitioner permanently. On hearing before such Court, Petitioner engaged counsel from the Ohio Legal Services but the Ohio Supreme Court affirmed the findings and ordered Petitioner permanently disbarred on February 25, 1976. A motion for reconsideration was timely filed, then overruled, (App. B). By reason of inability to hire counsel, Petitioner has filed this appeal pro se.

ARGUMENT AND LAW

I. Statistics have proven in adversary proceedings presence of counsel is distinctly advantageous. Misdemeanants with counsel fare 5 to 1 better than those without. *Argersinger v. Hamlin,* 407 U.S. 25, 36.

"In civil cases, plaintiffs representing themselves were nine times less likely to obtain a settlement and the odds are as great in trial.

A study of mental commitments conducted by a student publication of the University of Toledo College of Law of mental hospital commitments found the percentage of unsuccessful commitments rose from 26.7% to 91.1% when the patient was represented by counsel." Brickman: "Of Arterial Passageways through the Legal Process: The Right of Universal Access to Courts and Lawyering Services", 48 N.Y.U.L. R. 595, 618. *Gideon v. Warmsright,* 372-U.S. 335, provided counsel for indigents in felony cases; *Arsinger,* supra, to misdemeanors. This Court has extended the assistance of counsel doctrine to "jail house" legal services and also provided in event of appeals "where an indigent was not represented by counsel in an appeal below, this Court may waive the requirement that the questions be preserved below." *Pollard v. U.S.* 352, U.S. 354, 359. The percentage of acquittals in felonies has been so minimal and of such rarity that courts refuse to allow a defendant to represent himself.

Indigency of an accused was the criteria in determining right to assistance or appointment of counsel in Gideon and Argersinger. The same test could apply here. Yet the record below is devoid of any evidence taken by the Panel or court of Petitioner's claim of inability to employ counsel as corroborated in the dissenting opinion.

The facts of his impecunious disposition would have, if adduced, shown the act charged was at a moment of fortune's low tide and also would have been in mitigation of penalty, if any. The Court knows that to decree disbarment is to decree poverty.

The economic factors or financial condition in mitigation could be adduced for Petitioner was too proud to admit same. *Benson v. State Bar,* 5 Cal. 3d 382, 388; *Brodpiece v. State*

Bar, 10 Cal. 3d 747, 518 p. 2d 337. During his long suspension, Petitioner's standard of living in his former position was reduced to one of almost abject poverty. He was without funds for counsel when these charges were filed. He had to sell his office building at great loss. He lost heavily in the market. He sold his office fixtures and supplies at great loss. His late model car was replaced by a 1966 vehicle. He was forced to sell his furniture and art to meet current living expenses. He paid for but lost in his try for reinstatement. His age and health were not favorable for private employment, although on the Civil Service list for years. His costly writings were making the rounds in literary circles, praised often, but never sold.

While there are no compilation of statistics on cases as that at Bar, it is equally persuasive that one should be saved from consequences of his own folly if a timely request is made therefor.

Because the Bar is the only profession that polices itself, fair disciplinary trials have always been persistently difficult. The Bar abhors adverse publicity to any lawyer. Such reflects on all in the public mind. This image arises out of the adversary system. An opprobrious accused may be disdained by most colleagues particularly when a prior infraction may have occurred. Any hearing is marked with hostitility, inimical in nature as the accused is a veritable anathema. The record below indicates such hostility by the resolute positions in actions taken. First, was in the conversion of an alleged contempt into a disbarment proceeding when Governing Rule V was not in existance at the time of his indefinite suspension, the refusal to allow the Petitioner to make restitution to the former clients, before any proceedings were filed; by rejection and overruling of motions for continuance until able to afford counsel or to appoint one for him or certify a federal question.

The final order could be construed or considered not as a judicial finding but an emotionally motivated one because the order itself is so harsh for one who allegedly violated the Court's order – that Petitioner could not be considered as a true adversary therein.

In cases of this nature, the accused himself is rarely heard in argument or if granted a right to argue, perfunctory attention is

given. In his experience, Petitioner has been told by counsel "The Court or Panel doesn't care to hear from you" and this Court can from its own knowledge and experience, take judicial notice of the same. So, if the accused is not to be heard and has no counsel, who would be a barrier or bulwork of safety between him and the Bar to cool their heat or champion or espouse his cause? In such instance isn't the denial of counsel a denial of due process? Yet the Panel and Court below by their decision held the proceedings were proper, although the issue was duly raised and argued.

"What constitutes due process under any set of circumstances must depend upon the nature of the proceedings involved and later rights that may possibly be affected by that proceeding." *Cafeteria & Restaurant Workers Union v. McElroy* 367 U.S. 886, 895.

Due process is not fixed in any form but tolerates variances in the form of a hearing "appropriate to the nature of the case", *Fuentes v. Shevin* 407 U.S. 82.

In re *Ruffalo,* 390 U.S. 544, described these proceedings as of an adversary nature, quasi criminal. Yet the Ohio court characterizes them as "neither civil nor criminal in nature, but investigatory." The fallacy of such usage lies in the fact that the argument fails when carried to a logical end. If the term "investigatory" is acceptable, why is punishment inflicted at the conclusion of such "investigation"? Surely one would have a right to defend against any punishment being imposed after the investigation. Regardless of the type of characterization or label placed on such proceedings, the question is: "do such proceedings come within the ambit of protection of "due process"? The ultimate test is fundamental fairness. It is obvious such fundamental fairness was not present below!

Assistance of counsel is a prerequisite to the very existence of a fair trial. *Powell v. Alabama* 287 U.S. 45, *Powell v. Texas* 382 U.S. 514. "The guiding hand" advocated in *Argersinger,* supra was conspicuously absent!

Petitioner was entitled to a fair hearing. In re *Ruffalo* 390 U.S. 544; *Spevak v. Klein,* 385 U.S. 511; in re Oiver, 333 U.S. 257. Justices Black and Douglas in *Isserman v. Ethics Commit-*

tee, 345 U.S. 927 stated:

> "A lawyer is denied due process when he is expelled from his profession without having an opportunity to confront his accusers and present evidence to deny, explain or extenuate the charges against him." See *Ex parte Robinson,* 19 Wall. 505, 512-513.

II. The conduct here was not malum se or insufficient for disbarment. Re *Ruffalo* 390 U.S. 555; nor would disbarment be ordered where reasonable minds differ (dissent) Re *Ruffalo,* supra.

The Court must be satisfied in its duty "not to disbar except upon conviciton that under the principles of right and justice it is constrained so to do". *Selling v. Radford* 243 U.S. 46, 51.

The New York Court of Cardozo, Pound and Crane felt a single occurrence was not the evil sought to be prohibited so an isolated incident was insufficient to sustain a conviction of unlawfully practicing law in violation of a statute. *People v. Goldsmith,* 249 N.Y. 536; *People v. Wiel,* 266 NYS 653. Here Petitioner did what any number of para legal aids would and could do in aid of an attorney. There was no evidence that the deeds or wills were drawn improperly or unusable.

In *Isserman,* 345 U.S. 292, Four (4) U. S. Supreme Court judges stated: "we do not recall any previous instance . . . where a lawyer has been disbarred by any Court of the United States or of a state merely because he had been convicted of a contempt."

Further, Petitioner submits he was niether disbarred nor reinstated under the Governing Rule V which was enacted after his infractions. There were no allegations or proof below that Petitioner's conduct was within purview of the rule. Hence a more cogent reason to refuse disbarment as there was no jurisdiction!

Lastly, the penalty for violation of a Court Order where an alternative remedy is available is "unnecessarily severe". In re *Sachar* 347 U.S. 388.

WHY THE WRIT SHOULD BE GRANTED

For the Petitioner this armageddon, the final battle in prolonged litigation over issues of due process. What acts were

complained of were not criminial nor did they involve moral turpitude yet in the case of an attorney the public thinks there was some crime or criminial conduct. For the disbarred, doors are closed, jobs are not available and as Lincoln wrote: "The tarnished lawyer becomes a homeless man." With suspension the door is left open to return to a chosen profession, the action here, if sustained, would bar the doors forever. A criminial can go to prison and find employment on release. A lawyer loses the right to use his skills or intelligence under this order forever. The harshness is readily seen. The Bar should be advised of this loss of rights. Aside from the personal elements the issue in this case presents the right of an indigent in adversary proceedings to counsel. The ruling here on a Constitutional issue will involve millions. All persons licensed in any area, real estate, vending, insurance and business will have transcendental Constitutional rights defined. The issue of due process in any type of hearing involving loss of license, business, reputation and property are affected. It is a matter of great general and public interest and one of novel interest that requires adjudication by this Court.

APPENDIX A

OHIO STATE BAR ASSOCIATION v. ILLMAN.

[Cite as Ohio State Bar Assn. v. Illman (1976), 45 Ohio St. 2d 159.]

(No. 75-4—Decided February 25, 1976.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline.

Respondent, Harry R. Illman, was admitted to the Ohio Bar in 1943. He began his legal career in Toledo.

In October 1952, the Court of Common Pleas of Lucas County suspended him from the practice of law for a period of five years. Upon termination of the suspension respondent resumed his practice in Toledo. On May 21, 1969, this court entered an indefinite suspension order against respondent. (18 Ohio St. 2d 122.) Following respondent's application for reinstatement, on January 18, 1973, this court confirmed the recommendation of the board of commissioners and denied respondent's petition for reinstatement.

This court's suspension order, *supra*, mandated "that * * * [respondent] be forbidden to counsel or advise or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law." In instituting this proceeding, the Ohio Bar Association, relator, elected to proceed under the disciplinary procedures of Gov. R. V., rather than to seek a contempt citation for violation of this court's order.

Respondent's former clients, Mr. and Mrs. George Yaney testified that Illman contacted them by telephone in December 1973, and that the call was to discuss with them the advisability of revising their respective wills. Respondent discussed the wills at Yaney's home. The Yaneys followed Illman's recommendation that the wills be revised, and designated respondent as attorney for the executor in both wills. Respondent allegedly informed the Yaneys that his fee for preparing the will was

$160. A check for that amount was paid to Illman by George Yaney.

Respondent also advised the Yaneys that it would be to their best interest to execute new deeds to change their real estate holding to an estate by the entireties with survivorship. Respondent was authorized to prepare the new deeds. His fee for preparation of the deeds was allegedly $150. A check for that amount was paid to him by George Yaney.

Neither the wills nor the deeds were executed by the Yaneys.

Respondent admitted that he prepared the wills and the deeds. He claimed, however, that the $160 payment to him was for past legal services, a claim which was denied by the Yaneys.

Respondent, claiming indigency, requested that counsel be appointed to represent him. The record reveals that the complaint to instigate this proceeding was filed on April 3, 1974. The notice of filing complaint stated that respondent was required to file a written answer within 20 days after April 12, 1974. On May 1, 1974, respondent filed his answer. On August 12, 1974, the chairman of the board's hearing panel set the hearing for November 4, 1974. The board of commissioners received a motion from respondent on October 17, 1974, for appointment of counsel. This motion was overruled on October 28, 1974. Notice of such action was sent to respondent at his last known address, and returned by the postal authorities as undeliverable because respondent "moved." Upon a telephone call to the secretary of the board, respondent was notified of the board's decision and that the hearing would proceed on November 4, 1974, as originally scheduled.

The board recommended that respondent be disbarred from the practice of law in accordance with Gov. R. V. 5 (a).

Mr. John R. Welch, Mr. Albert L. Bell, Mr. Jack C. Harris and Mr. Harlan S. Hertz, for relator.

Messrs. Schwartz, Fisher, Spater, McNamara & Marshall, Mr. Theodore G. Fisher and Mr. Leonard J. Schwartz, for respondent.

Per Curiam. From a review of the record there is very little dispute as to evidence adduced before the board. Whether one of the two checks was paid by the Yaneys to respondent for present or past legal services is of no great significance. Respondent admitted preparing the deeds and the wills, and admitted receiving at least one check for such services. By no stretch of the imagination can the activity of the respondent be considered as paralegal or legal-intern services, as there was no semblance of compliance with the Ohio rules as to supervised limited practice of law by legal interns. See Gov. R. II, Section 2.

Respondent's admission that he prepared the instruments for the Yaneys is an admission that he violated this court's order of May 21, 1969.

Respondent's principal contention before the board was that during much of his life he was a "compulsive gambler," but now has disciplined himself through professional counselling and is no longer engaged in such activity. However that may be, "compulsive gambling" is no defense to an actual violation of an order issued by this court to a suspended attorney not to engage in the practice of law.

In his brief and oral argument to this court, respondent claims that the board's hearing panel denied him due process by failing to continue the hearing and appoint counsel to represent him at the hearing.

In *Ohio State Bar Assn.* v. *Weaver* (1975), 41 Ohio St. 2d 97, 100, this court held that "[t]he court's purpose in a proceeding [disciplinary] of this type is not to enforce the criminal code, but rather to investigate the conduct and fitness of one of its officers. These proceedings are neither civil nor criminal; they are instituted to safeguard the courts and to protect the public from the misconduct of those who are licensed to practic law."

The primary function of disciplinary proceedings is investigatory, not accusarory or prosecutorial, and those proceedings

are neither civil nor criminal in nature. The standards of due process in such proceedings are not those in a criminal proceeding, nor does it seem to us a necessity of due process that a respondent, who has practiced as an attorney, be entitled as a matter of right to have counsel appointed for him. Furthermore, the record shows that respondent conducted his defense with adroit cross-examination and argued before the panel with logic and self-control.

Upon a review of the entire record, we find that the board's hearing panel did not abuse its authority in refusing to appoint counsel to represent respondent.

A summary of respondent's conduct since admission to the Bar of Ohio reveals two court-ordered suspensions from the practice of law, coupled with a violation of this court's order prohibiting respondent from practicing law.

We conclude, therefore, that respondent's misconduct requires his disbarment, and it is so ordered.

Judgment accordingly.

O'Neill, C. J., Herbert, Corrigan, Stern, Celebrezze and W. Brown, JJ., concur.

Paul W. Brown, J., dissenting. Because the board of commissioners denied a timely request by respondent for the assistance of legal counsel, I cannot join the majority opinion which disbars the respondent from the practice of law. The board's assertion, in its report to this court, that "[r]espondent *elected* to serve as his own attorney," is not supported by the record. (Emphasis added.)

Relator's complaint was filed with the board of commissioners on April 3, 1974. Notice of the filing was sent to respondent on April 10. On May 1, respondent filed an answer to the complaint, and a "motion to stay or consolidate." In that motion, respondent stated that he was undergoing "prolonged, extensive, and expensive psychoanalysis," and that he would be without sufficient funds to engage counsel until after January 1, 1975. Respondent stated further that he would be eligible to petition for reinstatement to the bar in January 1975,

and suggested consolidating the disciplinary and reinstatement proceedings.

On May 22, the motion to stay or consolidate was denied. Counsel for relator was instructed to make inquiry concerning respondent's mental condition. On August 5, in response to such inquiry, respondent by letter advised relator and the board, "* * * I am still unemployed and without funds for employment of counsel," and made inquiry as to the possibility of appointed counsel.

An August 12, without any action on respondent's request for counsel, the formal hearing on relator's complaint was scheduled for November 4, 1974.

On October 17, respondent filed a motion to set aside and vacate the hearing date, stating that he was in a state of severe depression, under the care of an analyst in the psychiatric department of the Ohio Medical College, and without funds to retain counsel. Respondent stated further that he had written to former counsel, had received no response, and "has waited until the present time in hopes of such response and that respondent is unwilling to force or impose himself on such counsel in this matter under such circumstances." On October 28, respondent's motion was overruled. Respondent did not receive written notice of that action until the morning of November 4.

On November 4, prior to the introduction of evidence before representatives of the board of commissioners, respondent renewed his request for appointed counsel. Respondent stated, in part:

"I would like to have the panel appoint counsel for me because I do not feel adequately mentally prepared to undertake my defense on this or any other matter and I will accept any counsel that you deem appropriate for the purpose of this hearing. This is a very important hearing and I think I should be represented by counsel and I don't feel that I could do so myself. This same matter would have a counsel appointed in a criminal case and this involves a professional life, loss of reputa-

tion, loss of income and so forth as well as humiliation and especially my mental condition it would be a horrendous burden to proceed without counsel in a case of this nature and so I would like counsel to represent me and I would like the record to show that I strenuously object to proceeding without adequate representation and I want the benefit of counsel at any hearing of this nature."

Respondent's request was again overruled, forcing him to conduct his own defense.

A proceeding to suspend a professional license must comport with the requirements of due process of law. *In re Ruffalo* (1968), 390 U. S. 544; *Spevack* v. *Klein* (1967), 385 U. S. 511. This court has never held that such a proceeding entitles a responding party to the assistance of counsel. In my judgment, however, "disbarment and the loss of professional standing, professional reputation, and of livelihood" *(Spevack, supra,* at page 516) are penalties at least as severe as those imposed in many criminal cases, where the assistance of appointed counsel is made available as a matter of course.

Where the need for the assistance of counsel is manifest, fundamental fairness dictates that one charged as was the respondent be assisted upon timely request. The entitlement should depend, not upon whether the respondent ought to be able to employ counsel, but whether he is in fact unable to employ counsel, by reason of indigency or otherwise. See *State* v. *Tymcio* (1975), 42 Ohio St. 2d 39. I would remand this cause to the board of commissioners, for a determination of respondent's entitlement to appointed counsel, and a rehearing on the merits of relator's complaint.

SC-18

APPENDIX B

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19..76.. TERM

To wit: March 19, 1976

Ohio State Bar Association,
Relator,

vs.

Harry R. Ilman,
Respondent.

No. DD 75-4

REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No.....Page.....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 19th *day of* March, *19* 76

THOMAS L. STARTZMAN *Clerk.*

By Jean L. Johnson *Deputy.*

APPENDIX C

Governing Rule V, Subsection 7, effective February 28, 1972

(7) Effect of Discipline. A person disbarred or a person who has voluntarily surrendered his license to practice shall never thereafter be readmitted to the practice of law in this State. A person who has been suspended for an indefinite period from the practice of law and thereafter reinstated in the manner hereinafter provided shall be disbarred upon being found guilty of subsequent misconduct. A person who has been publicly reprimanded for misconduct, upon being found guilty of subsequent misconduct, shall be suspended for an indefinite period from the practice of law or permanently disbarred, depending upon the seriousness of such misconduct.

APPENDIX D

THE FEDERAL QUESTION

Petitioner, after overruling of his Motion for Reconsideration by the Ohio Supreme Court, filed a request in writing with the cover sheet therof entitled "Request For a Certificate To Show Federal Question". The first two paragraphs of such request provided as follows:

> "Respondent respectfully moves the Court for an Order to direct the Clerk of this Court to prepare and mail to Respondent a certificate for use on appeal from the order hereof that a federal question, that is denial of due process, among others, was an issue raised, argued and presented in trial hereof.
>
> Respondent respectfully represents that prior to the taking of any evidence hereof, he complained that being "forced" to proceed without counsel was a denial of due process under the Constitution. The dissenting opinion corroborates such argument made in the record. Since the federal question should be clearly shown on appeal to the U. S. Supreme Court, this request is made for such purpose."

It was this request that was denied in the Order following herewith.

SC-8 (BLANK ENTRY)

THE STATE OF OHIO,
City of Columbus.

19 76 TERM

Ohio State Bar Association,
Relator,

To wit: April 28, 1976

No. DD 75-4

vs.

Harry R. Illman,
Respondent.

E N T R Y

Upon consideration of the motion, filed by respondent, for a certificate to show federal question, it is ordered by the court that this motion be, and the same hereby is, denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No.....Page.....

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 28th *day of* April *19*76

THOMAS L. STARTZMAN *Clerk.*

By Dana L. Jacino *Deputy.*

CERTIFICATE OF SERVICE

STATE OF OHIO)
) SS: **AFFIDAVIT**
COUNTY OF LUCAS)

Harry R. Illman, being first duly sworn upon oath deposes and says that he is the Petitioner and Affiant herein; that Affiant has prepared the brief in this writ himself and is appearing in his own behalf, pro se, that he is not a member of the Bar of this Court; that pursuant to Part VIII Rule 33 of the Rules of the Supreme Court of the United States Affiant made service of a copy of the brief hereof by mailing by certified mail true copies of the same to the Ohio State Bar Association Attorneys at the address listed on the cover page herein, by accordance with Rule 33 (1) thereof. Affiant states that such mailing was made on the 11th day of May, 1976; that on the same date 40 copies of the brief herein was mailed to the Clerk of this Court.

Affiant further sayeth not.

Harry R. Illman
HARRY R. ILLMAN

Sowrn to before me and subscribed in my presence this day of May, 1976.

KATHLEEN R. HORRIGAN
Notary Public, Lucas County, Ohio
My Commission Expires Oct 10, 1976

Kathleen R. Horrigan
Notary Public, State of Ohio